IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7682 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTILAL DHIRAJLAL DESAI - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR BD DATTA for Petitioner(s) : 1,
MR SONI, AGP for Respondent(s) : 1, 3,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 01/02/2007

ORAL JUDGMENT

1. The petitioner has preferred the petition for challenging the order passed by the State

Government in revisional jurisdiction, whereby the proceedings of auction of the land in question is set aside.

2. Heard Mr.Chhaya for Mr.Datta, learned Counsel appearing for the petitioner and Mr.Soni, learned AGP for the State Authorities.

3. Upon hearing the learned Counsel appearing for both the sides, it appears that it is not in dispute that the auction came to be held as back as in the year 1981 and it was also confirmed in the year 1981. The proceedings in suo motu revision were initiated for the first time by issuing notice dated 4.12.1995. The perusal of the impugned order shows that there were two grounds in the show-cause notice for exercise of the power and out of those two grounds, so far as permission under Section 43 of the Bombay Tenancy and Agricultural Lands Act is concerned, the State Government has found that such ground would not survive in view of the payment of premium already made of 60 times revenue. The State Government on administrative side has not challenged the said order.

4. So far as the second ground is concerned, it pertains to the holding of the auction without prior permission of the authority under Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as “ULC Act of 1976”). The petition came to be entertained for the first time on 5.10.1996 and the interim order of maintaining status quo was passed, which is in operation till today. Pending the petition, the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (hereinafter referred to as “Repeal Act”) has come into force and accordingly, the ULC Act of 1976 is repealed, barring certain actions already taken under the ULC Act of 1976 either of taking over the possession, after vesting under Section 10(3) of the Act, of the land, which is declared as excess land or the exemption granted under Section 20(1) of the Act. Neither of the contingencies providing for saving of the action under Section ULC Act of 1976 arises in the present case. Therefore, when the ULC Act of 1976, even for so far as it relates to obtaining prior permission of the ULC

Authority before the auction, does not remain in operation, no cause would continue to remain as found by the State Government in the impugned order. As such by afflux of time and in view of the Repeal Act, the cause as mentioned in the impugned order of the Government would not survive and consequently if it is observed that the order of the State Government would not survive, no serious prejudice will be caused to either side.

5. In view of the above, it is hereby observed that in view of the Repeal Act, the impugned order of the State Government would not survive and as a consequence thereof, there is no cause surviving for examining the legality and validity of the order.

6. Hence, the petition is disposed of as having become infructuous in view of the Repeal Act and consequently non-surviving of the impugned order. Rule partly made absolute accordingly. No order as to costs.

1.2.2007 **(Jayant Patel, J.)**

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